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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 EDWARD ONTIVEROS,¹

2:04-cv-1141-GEB-CMK-P

12 Petitioner,

13 vs.

ORDER

14 DIRECTOR OF CORRECTIONS,
15 et al.,

16 Respondents.
17 _____/

18 Petitioner, a state prisoner proceeding with appointed counsel,² brings this petition
19 for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's
20 pro se request for a certificate of appealability (Doc. 44), filed on December 10, 2007.

21 Before petitioner can appeal this decision, a certificate of appealability must issue.
22 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability may issue under 28
23 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a
24 _____

25 ¹ The court's prior orders incorrectly state petitioner's name as "Ontiveras."

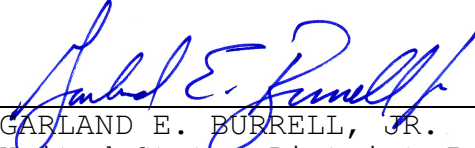
26 ² Joseph J. Wiseman, Esq., was appointed to represent petitioner and has not been
relieved.

1 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
2 appealability indicating which issues satisfy the required showing or must state the reasons why
3 such a certificate should not issue. Fed. R. App. P. 22(b).

4 The timely filing of a notice of appeal is a jurisdictional requirement. See Scott v.
5 Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). The time limit for filing a notice of appeal
6 following entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner's notice of appeal
7 in this action was filed more than thirty days after entry of judgment. It is, therefore, untimely
8 and cannot provide the appellate court with jurisdiction. The issuance of a certificate of
9 appealability cannot vest the court of appeals with jurisdiction if jurisdiction is not proper in that
10 court. Cf. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978) (addressing issuance of a
11 certificate of probable cause). Because petitioner’s notice of appeal is untimely, the court
12 declines to issue a certificate of appealability.

13 Accordingly, IT IS HEREBY ORDERED that petitioner’s request for a certificate
14 of appealability is denied.

15 Dated: January 4, 2008

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18 GARLAND E. BURRELL, JR.
United States District Judge
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